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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DEIRDRE JEANINE EVERETT,

Defendant and Appellant.

E049565

(Super.Ct.No. FVI901044)

OPINION

APPEAL from the Superior Court of San Bernardino County. Miriam Ivy Morton, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant, Deirdre Everett, appeals from her conviction after a jury trial on one felony count of writing a nonsufficient funds check (Pen. Code, § 476a, subd. (a))¹ and

¹ All section references are to the Penal Code unless otherwise indicated.

sentence of 60 days in jail, to be served on weekends. As discussed below we affirm the conviction.

FACTS AND PROCEDURE

On November 23, 2008, defendant purchased a Chevrolet Cobalt car from a dealership in Victorville. Defendant signed an installment sales contract, in which she was to purchase the car for \$13,900.00. Defendant gave the dealership \$200.00 cash and a check for \$1,300.00 post-dated for November 30. Defendant drove the car home that day. The check was returned from the bank unpaid. The dealership contacted defendant by telephone two or three times regarding the returned check, and she stated she would come in with \$1300.00 in cash, but she never did.

The check defendant wrote was from an account that was closed by the bank on November 4, 2008, after it had been overdrawn for over 40 days. The bank sent defendant two notices that the account was overdrawn, on August 18 and September 2. The bank then sent a notice right after it closed the account.

San Bernardino County Sheriff's Deputies executed a search warrant on defendant's home on April 1, 2009. Defendant told Deputy James Marshall that she knew her checking account was closed when she wrote the check for \$1300.00. She also told the deputy that she had intended to return to the dealership to redeem the check for cash, but she never did. Defendant denied that the dealership had ever contacted her regarding the check and stated she was waiting to be contacted about making payments. Defendant had her sister bring the Chevy Cobalt to her residence.

On May 15, 2009, the People charged defendant with five felony counts – commercial burglary (§ 459); forgery (§ 476); writing a nonsufficient funds check (§ 476a, subd.(a)); receiving stolen property (§ 496, subd. (a)); and embezzlement (§ 504a). On July 24, 2009, the People dropped all charges except the charge for writing a nonsufficient funds check. The People alleged defendant knowingly wrote a bad check payable to an auto dealership as a down payment for purchase of a vehicle, in the amount of \$1,300.00, with the intent to defraud the dealership.

Before the People began presenting their case, the trial court held a hearing under Evidence Code section 402 to determine whether to exclude the statements defendant made to Deputy Marshall at her home while the search warrant was being executed. The trial court concluded that defendant made the statements voluntarily rather than while under arrest or interrogation, and allowed the statements to be admitted.

After the People had presented their case in chief, the trial court denied defendant's motion under section 1118.1 to dismiss the charge for insufficient evidence. The court did so again at the close of the defendant's case.

Defendant testified that she had arranged with the dealership not to deposit the \$1300.00 check for seven days so she would have time to cash her next paycheck and bring in the cash in exchange for the check. Defendant testified that "some items came up" and she did not have the entire \$1300.00 after she got paid. About three weeks later defendant received a letter stating that "they had a problem financing me." She called the dealership and attempted to make arrangements to finance the car. Defendant also testified that she did not know her bank account had been closed until the deputies told

her on April 1, 2009. Defendant stated that, at the time the search warrant was served, she was waiting for the dealership to contact her regarding an alternate financing arrangement.

The jury found defendant guilty.

On September 30, 2009, the trial court denied defendant's motion under section 17, subdivision (b), to reduce the felony conviction to a misdemeanor. The court then sentenced defendant to serve 60 days in county jail on weekends, with credit for time served, along with three years of supervised probation, restitution, and various fines and penalties. This appeal followed.

DISCUSSION

Defendant appealed and, upon her request, this court appointed counsel to represent her. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a summary of the facts, potential arguable issues, and requesting this court undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, but she has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P.J.

We concur:

RICHLI
J.

KING
J.